IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 91 OF 2000.

State through Public
Prosecutor, Panaji. ... Appellant.

Versus

Dinesh Gaude, r/o
House No. 279, Udivada,
Usgao, Ponda. ... Respondent.

Mr. S.N. Sardessai, Public Prosecutor for the Appellant State.

Mr. Valmiki Menezes, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 20th February 2003.

ORAL JUDGMENT.

The appellant/State has filed the present appeal challenging the acquittal of the respondent/accused for an offence punishable under Sections 279, 337 and 304-A of the Indian Penal Code, passed by the Judicial Magistrate, First Class, Sanguem, by Judgment dated 15th July 2000, in Criminal Case No. 40/S/99.

2. The facts in brief necessary for the decision of the appeal are set out hereunder:-

P.W.1 Minguel Fernandes filed the report at Exhibit P.W.1/A. He had received the information of the accident from one labourer named Shrikant Gaonkar. According to P.W.3 Dulo Naik, who has been injured in

the accident, on 30th March 1999, he had gone to Sanvordem in order to purchase some household items. After purchasing the items, he had gone to Codli in order to go to the canteen situated in the mining area of Pandurang Timblo, which was being run by his brother. At about 12.30 p.m. he had reached Codli and waited there about ten minutes. At that time one Umesh Gaonkar came with a scooter for going to Codli mines where the canteen is located. P.W.3 Dulo requested Umesh to give him a lift up to the canteen and, accordingly, sat on the pillion of the said scooter while Umesh was riding the same. They proceeded thus for about ten minutes and from the opposite side one green coloured truck came in a fast speed and gave a dash on the right side of the scooter near the bumper. As a result of the dash, both Umesh and P.W.3 Dulo fell on the ground. The truck dragged the scooter up to a certain distance. P.W.3 Dulo sustained injuries to the right hand and right leg. The rider of the scooter Umesh expired due to the injuries. In the cross-examination he has admitted that he had placed a sack containing 15 kgs. of rice, milk bags, chillies, etc., inbetween the rider and himself. He has also admitted that the road to the Timblo Mines was rough and they could not drive the scooter smoothly.

3. P.W.6 Cruz D'Silva is also an eye witness, who states that at about 1.00 p.m. he saw the truck giving

a dash to a scooter coming from the opposite direction.

4. The panchanama of the scene of offence was drawn in the presence of P.W.2 Namdev Naik. The said panchanama is at Exhibit P.W.2/A Colly.

5. The learned trial Court, while referring to the scene of offence panchanama and the sketch, came to the conclusion that the scooter was 2.50 metres away from the edge of the road. The learned trial Court also came to the conclusion that the scooterist was in the process of crossing the road from the left hand side to the right hand side where the Pandurang Timblo Mines Office is situated. The learned Judge has also taken into consideration that the road was rough, being a kutcha road and it was quite possible that the scooterist had lost his balance. Thus, the learned trial Court came to the conclusion that there was no evidence to suggest that the truck driver was either rash or negligent.

6. I have heard the learned Public Prosecutor for the appellant/State. With the assistance of the learned counsel appearing for the accused and the learned Public Prosecutor for the State, I have perused the evidence. It appears from the evidence that the scooterist Umesh was riding the scooter virtually in the middle of the

road and was in the process of taking a right hand turn. Admittedly, the road was rough and the scooter could not be smoothly driven. There is no evidence that the accused was driving the truck in a rash and negligent manner and the rash and negligent act of the accused has caused the death of deceased Umesh. The learned trial Court, according to me, has rightly come to the conclusion that the scooterist may have lost his balance because of the articles, which were placed inbetween the scooterist and the pillion rider and also in view of the condition of the road.

7. This is an appeal against acquittal and the view taken by the learned trial Court does not appear to be a perverse view unsupported by material on record. According to me, the learned trial Court has correctly appreciated the evidence and has arrived at the finding which needs no interference in the appeal against acquittal.

8. In view of this, Criminal Appeal is dismissed.

(P.V. HARDAS)
JUDGE.

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